

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Joint Application for Authority to Transfer
Control of National Comtel Network, Inc.
(U-5341-C) to Jeff L. Foss, an Individual.

Application 02-05-006
(Filed May 1, 2002)

OPINION APPROVING TRANSFER OF CONTROL**Summary**

This decision grants the joint application of National Comtel Network, Inc. (NCN) and Jeff L. Foss (Foss) for approval of the transfer of control of NCN to Foss.

Parties to the Transaction

NCN is a California corporation authorized to resell local exchange and interexchange services.¹ Its principal place of business is located at 18340 Ventura Boulevard, Suite 218, Tarzana, California 91356.

Foss is an individual whose principal place of business is located at the same address as NCN.

Proposed Transaction

Pursuant to a letter of intent Foss purchased 100% of the issued and outstanding stock of NCN on or about December 31, 2001.

¹ NCN was authorized to resell inter-Local Access and Transport Area interexchange services and local exchange services by Decision (D.) 93-11-038 and D.96-02-072, respectively.

The applicants represent that the transaction will provide NCN with access to additional working capital. The applicants also represent that the transaction will be transparent to customers. There will be no change of name, and customers will continue to receive service under the same rates, terms, and conditions after the transaction is approved.

Discussion

In a situation where a person who does not possess a CPCN desires to acquire control of a company that possesses a CPCN, we will apply the same requirements as in the case of an applicant seeking a CPCN to exercise the type of authority held by the company being acquired. Since NCN possesses a CPCN to resell local exchange and interexchange telecommunications services within California, we will apply the requirements for such authority to Foss.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who desires to resell local exchange and interexchange services must demonstrate that it has a minimum of \$25,000 in cash or cash equivalent, reasonably liquid and readily available to meet the firm's start-up costs. In addition, the applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

Foss provided a bank statement that demonstrates that he has sufficient financial resources to satisfy our financial requirements. In addition, the applicants provided biographical information on Foss and his management team that demonstrate that they have sufficient expertise to operate as a telecommunications carrier. Therefore, we find that our requirement for technical expertise is satisfied.

The transaction will improve NCN's access to working capital. In addition, it will be transparent to customers. Therefore, the proposed transaction is not adverse to the public interest.

Pub. Util. Code § 851 (§ 851) provides that "No public utility...shall sell...the whole or any part of its...plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder...without having first secured from the commission an order authorizing it to do so." Pub. Util. Code § 854 (§ 854) provides that "No person...shall...acquire...any public utility organized and doing business in this state without first securing authorization to do so from the commission." The purpose of these sections is to enable the Commission, before any transfer of public utility property is consummated, to review the situation and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co. (1916) 10 CRC 56.) In this instance, the transaction took place before the applicants sought the Commission's approval. Therefore, the applicants violated § 851 and § 854. The applicants represented that they were unaware of the requirements for advance approval of the transaction. As soon as they became aware, they filed this application. Ignorance of the requirements is no excuse, especially for the utility. However, no customer's service was interrupted as a result of the violations. In addition, since no protests were filed in this proceeding, we have no reason to believe that anyone was disadvantaged by the transaction. Therefore, we will not impose a penalty pursuant to § 2107. However, we caution the applicants that they are required to make themselves aware of all applicable statutes and Commission requirements, and to comply with them.

As discussed above, Foss has satisfied our financial and experience requirements, and the proposed transaction is not adverse to the public interest. Therefore, we will grant the application.

Request to File Under Seal

The applicants request that the financial information filed with the application, and on June 10, 2002, be filed under seal. The financial information consists of MCN's financial statements, an offer to purchase by Foss, and a bank statement for Foss. The applicants represent that the information is proprietary and sensitive. The information, if revealed, would place them at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

Procedural Matters

In Resolution ALJ 176-3088, dated May 16, 2002, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. Therefore, a public hearing is not necessary, and it is not necessary to alter the preliminary determinations.

This is an uncontested matter in which the decision grants the requested relief. Therefore, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. NCN is authorized to resell local exchange and interexchange services.
2. As a result of the transaction, Foss owns 100% of NCN's issued and outstanding stock.
3. There will be no change in the name of NCN as a result of the transaction.

4. Customers will continue to receive service under the same rates, terms, and conditions after the transaction.

5. Foss has sufficient financial resources to meet the Commission's requirements to resell local exchange and interexchange services.

6. Foss and his management team possess the necessary technical expertise required by the Commission.

7. The transaction took place without prior Commission approval.

8. No customer's service was interrupted as a result of the transaction.

9. There were no protests to this application.

10. Public disclosure of the financial information filed under seal would place the applicants at an unfair business disadvantage.

11. Notice of this application appeared on the Commission's Daily Calendar on May 8, 2002.

12. No hearings are necessary.

Conclusions of Law

1. The Commission will apply the same requirements to a request for approval of an acquisition of control of a reseller of local exchange and interexchange telecommunications services within California as it does to an applicant for authority to provide such services.

2. Foss meets the Commission's requirements for the issuance of a CPCN to resell local exchange and interexchange telecommunications services.

3. The transaction is not adverse to the public interest.

4. Since the transaction took place without prior Commission approval, the applicants violated § 851 and § 854.

5. Since no customer's service was interrupted as a result of the transaction, and no one was disadvantaged by it, no fines should be imposed for the violations of § 851 and § 854.

6. In order to allow timely implementation of this transaction, this order should be made effective immediately.

7. The applicants' request to have the financial information filed with this application, and on June 10, 2002, kept under seal should be granted.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 854, the joint application of National Comtel Network, Inc. (NCN) and Jeff L. Foss (Foss) for approval of the transfer of control of NCN to Foss is approved.

2. The applicants' request to have the financial information filed with this application, and on June 10, 2002, kept under seal is granted for two years from the effective date of this decision. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

3. If the applicants believe that further protection of the information kept under seal is needed, they may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

4. This application is closed.

This order is effective today.

Dated _____, at San Francisco, California.